

21

FILED

OCT 1 1943

CHARLES ELMORE CROPLEY  
CLERK

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1943.

---

**No. 168**

---

GUY CARLETON DENNEY, *Petitioner,*

vs.

THE FORT RECOVERY BANKING COMPANY,  
*Respondent.*

---

ON PETITION FOR CERTIORARI TO THE UNITED STATES CIRCUIT  
COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

---

**REPLY BRIEF.**

---

ELMER McCLAIN, Lima, Ohio,  
*Counsel for the Petitioner.*

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1943.

---

**No. 168**

---

GUY CARLETON DENNEY, *Petitioner,*

vs.

THE FORT RECOVERY BANKING COMPANY,  
*Respondent.*

---

ON PETITION FOR CERTIORARI TO THE UNITED STATES CIRCUIT  
COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

---

**REPLY BRIEF.**

---

The order of this reply brief follows that of the brief of the respondent to which it replies. All emphasis is supplied.

**Page 2 of "Brief of Respondent"**  
**The Last Whole Paragraph**

The statement that "Attorney Skinner had a conference with the Conciliation Commissioner and withdrew the petition for review" is one injected into the case after it had been asserted that no petition for review had ever been filed, with the further castigation of the petitioner as "contumacious" for asserting that it had been filed. R. 29, bottom of page to R. 31 top of page. When, upon the discovery of the original letter from the conciliation commissioner (quoted at R. 42, last paragraph of the quoted letter of September 17, 1940), it was indubitably proved that **the petition for review had been filed exactly as the petitioner asserted**, the statement was made that to file such a paper "by correspondence" was "a very unsatisfactory way to conduct proceedings". R. 45, bottom of page, R. 46, top of page.

Later, after the final order of the district court had been entered and **after the appeal to the court of appeals had been taken** the respondent put in an affidavit that the petition for review had been withdrawn (R. 54) by an Attorney Skinner **who is now deceased**. R. 60. The assertion is as empty as would be one that an appeal as a matter of right fully perfected in a United States Circuit Court of Appeals was stricken from the docket of that court because the papers were delivered by the clerk to someone, or even that someone had suggested to the clerk that he pay no attention to them.

**Page 3 of "Brief of Respondent"**  
**First full paragraph**

The "consent order" of February 17, 1942, as the respondent represents it, was **not** consented to by either At-

torney Cook or by the petitioner No "consent order" was entered on February 17, no order whatever was made or entered on that date. It was four months later that an order was entered on August 17. R. 8. The only evidence of "consent" is that noted by the clerk at R. 64, entry of December 17, 1942, which reads: "By agreement **debtor permitted to redeem** property for \$8680.00 within six months from date and waives right to reappraisal." The order which was put on **four months later** at R. 8 was never approved by the petitioner or his counsel, as there fully appears. The words "On default thereof, said land to be sold," were **not part of any "consent"**, the only "consent" was that the debtor be "permitted to redeem."

**Pages 3 and 4 of "Brief of Respondent"**  
**Paragraph beginning at bottom of page 3**  
**and ending at top of page 4**

The statement that the petitioner "moved off the farm and accepted a position in a defense factory" etc., is gratuitous and unsupported by any evidence.

**Page 4 of "Brief of Respondent"**  
**Paragraph (4) at bottom of page.**

If the words "disputed facts" which are here used by Respondent, are meant to refer to the repeated statement that "no petition for review was ever filed" it must be said that the respondent itself put into the record on affidavit of the former conciliation commissioner stating that it had been filed exactly as the petitioner originally asserted. R. 54. Also that the respondent put into the record the statement of the district judge himself that the petition for review had been filed exactly as the petitioner originally asserted. R. 55, folio 58. Appellee's (respondent's) designation at R. 56, bottom of page.

### Pages 5 to 8 of "Brief of Respondent"

The respondent originally asserted that a petition for review was **never filed**. It then asserted by its own documents that it **was filed**. It then countered with the **post-mortuary statement** that it was filed by Attorney Cook and later handed by the conciliation commissioner to an Attorney Skinner, **who is now deceased**.

The short of the whole subject of the petition for review is that it was **duly filed but never certified by the conciliation commissioner to the court** pursuant to his statutory duty that referees shall "prepare promptly and transmit to the clerks certificates on petitions for review." Bankruptcy Act, Section 39 a (8). This the respondent admits.

### Page 8 of "Brief of Respondent"

#### Bottom of page

It was impossible to comply with the void and enigmatic order of the conciliation commissioner.

Finally the petitioner respectfully points out that the respondent diligently beclouds the issue of whether a bankruptcy court may shorten the statutory stay of three years and then sell out the farmer debtor because he fails to **"pay into court"** the value of his farm before the shortened period. In other words the issue is whether the bankruptcy court may by judicial legislation amend Section 75 (s) (3) **as if it read: "At the end of three years, or prior thereto, or within such shorter time as the court may fix, the debtor may pay into court"**, etc.

The **only basis** of the order appealed from is in the statement of the district court that:

**"The court finds that the time for redemption has expired, and said debtor has failed to so redeem said lands"**. R. 37, folio 35.

The appellate court based its affirmance upon exactly the same ground:

**"Since the appellant failed to redeem the property by August 17, 1942, the appellee on September 18, 1942, filed its petition for an order of sale and for the appointment of a trustee therefor"** . . .

**"On November 21, 1942, after a hearing, the court sustained the petition of the appellee, entered an order for sale, and appointed a trustee."** R. 94, middle of page.

It is also respectfully repeated that **no hearing was ever held on the petition of the respondent for an order of sale.** The words **"after a hearing,** the court sustained the petition of the appellee, entered an order for sale, and appointed a trustee" are true only in the sense that **"after a hearing on a different matter,** the court sustained the petition of the appellee" etc. Nothing was heard by the district court but the petition of the petitioner that (1) he be allowed his full three year stay pursuant to Section 75 (s) (2) and (2) that his petition for review be heard pursuant to Section 39 a and c.

Respectfully submitted,

ELMER McCLAIN, Lima, Ohio,  
*Counsel for the Petitioner,*  
 Guy Carleton Denney.

Lima, Ohio  
 September 17, 1943